

Spl. POCSO Case 95/2025
State Vs. Saurabh Walunj and ors.

ORDER BELOW EXH.39
(Passed on this 06th February, 2026)

By the present application, the applicant Aditya Gulab Kabadi seeks his discharge from the present case in respect of the alleged offences punishable under Section 376D, 506, 34 of the Indian Penal Code, Section 4, 6, 8 and 12 of the POCSO Act and sections 3(2)(v), 3(2)(va), 3(1)(w)(i)(ii) of the Prevention of Atrocities (Scheduled Castes and Schedules Tribes) Act.

2] The case of the prosecution is that, on 20th December 2020, at about 11.00 a.m., the informant, who is also the victim, along with her cousin, had gone to a tailor shop. While returning from the said shop, two boys from their village, namely Saurabh and Karan, allegedly followed them. When the victim and her cousin reached Bailgadi Ghat, the said two boys intercepted them, caught hold of the victim, and forcibly dragged her into a nearby field. The cousin of the victim managed to flee from the spot. It is alleged that after dragging the victim into the field, the accused Saurabh and Karan removed her clothes and subjected her to sexual assault. It is further alleged that the accused took nude photographs of the victim on their mobile phones and threatened her that, in the event she disclosed the incident to anyone, the said photographs would be uploaded on the internet. Thereafter, the accused Saurabh and Karan allegedly left the spot on a black motorcycle along with their friend, namely Aditya (present applicant). The informant-cum-victim thereafter returned to her house. On 28th December 2020, at about 6.00 p.m., upon inquiry

by her mother, the victim disclosed the incident dated 20th December 2020, pursuant to which the present offence came to be registered against the accused.

3] The learned Advocate for the applicant submitted that there is absolutely no overt act attributed to the applicant. It was contended that the applicant has neither touched the victim nor committed any sexual act upon her. The victim has not stated, either in the First Information Report or in her statement, that the applicant was present at the spot when the other accused allegedly committed sexual assault upon her. It was further submitted that there is no material on record to show that the applicant shared any common intention or participated in the commission of the alleged offence. No witness has attributed any criminal role to the applicant. The learned Advocate contended that merely because the applicant was allegedly seen riding a motorcycle with the other two accused would not, by itself, render him liable to be prosecuted in the present case. He further submitted that even if the entire charge-sheet is accepted at face value, it does not disclose sufficient grounds to proceed against the applicant. Hence, it was prayed that the applicant be discharged from the present case.

4] The learned A.P.P. opposed the application and submitted that there is voluminous material on record against the applicant-accused, which prima facie establishes his complicity in the commission of the offence. It was contended that serious offences have been leveled against the accused and, therefore, he is not entitled to be discharged at this stage. The learned APP further

submitted that the applicant had aided and abetted the principal accused and that his role cannot be brushed aside. It was argued that at the stage of consideration of a discharge application, the Court is not required to assess the probative value of the material on record, but only to examine whether a prima facie case is made out.

5] It was further submitted that the evidence collected by the prosecution indicates that the applicant was actively involved in the commission of the crime. The learned APP also invited the attention of the Court to the reply filed by the victim below Exhibit 43, wherein the victim has contended that the applicant has terrorised the village and that there exists a likelihood of harm or injury being caused to her or her family members if the applicant is discharged. On these grounds, the learned APP prayed for rejection of the discharge application.

6] Upon hearing the rival contentions, following points arise for my consideration.



Sr. No.	Order	Findings
1.	Does the applicant show that, there is no material in the charge-sheet to frame charge against him?	Yes.
2.	What Order?	Application is allowed.

7] The scope of consideration at the stage of discharge under Section 227 of the Code of Criminal Procedure is well settled. The Court is required to examine whether the material on record discloses a grave suspicion against the accused. The Court is not expected to

conduct a meticulous appreciation of evidence or weigh its probative value. However, at the same time, the Court must be satisfied that the allegations and material, even if taken at their face value, disclose the essential ingredients of the alleged offences so as to justify proceeding against the accused.

8] In the present case, a careful perusal of the First Information Report, the statement of the victim, and other material collected during investigation reveals that the specific allegations of sexual assault are attributed only to the co-accused Saurabh and Karan. The victim does not allege that the present applicant committed any sexual act upon her. There is also no categorical allegation that the applicant was present at the spot at the time when the alleged sexual assault took place. The prosecution case, insofar as the present applicant is concerned, rests primarily on the allegation that after the incident, the co-accused allegedly left the spot on a motorcycle along with the applicant. Except for this assertion, there is no material on record to indicate that the applicant shared any common intention, participated in the commission of the offence, or aided or abetted the principal accused in any manner.

9] No witness has attributed any overt act or specific role to the applicant. There is no material to show prior meeting of minds, pre-concert, or any act facilitating the commission of the alleged offence by the principal accused. Mere association with the co-accused or being seen with them subsequently, in the absence of any other incriminating material, is insufficient to attract criminal liability, particularly for offences of such grave nature. It is pertinent

to note that, in the present case, the informant, at the time of the alleged sexual assault, was accompanied by her cousin. The statement of the cousin reveals that after the incident, she returned home and did not disclose the alleged incident to anyone. Such conduct, at least at this stage, assumes significance while considering the role attributed to the present applicant. It is further borne out from the record that the statement of the cousin was recorded only after registration of the crime. A perusal of her statement also does not indicate that the present applicant was either following the victim or was present at the spot at the time when the alleged offence was committed upon the victim.

10] The contention of the learned APP that the applicant has aided and abetted the offence is not supported by any tangible material on record. The bald allegation of abetment, without supporting circumstances or acts attributable to the applicant, does not raise a grave suspicion so as to compel the applicant to face trial. As regards the reply filed by the victim below Exhibit 43 alleging that the applicant has terrorized the village and is likely to cause harm, the said allegations are general in nature and do not pertain to the specific role of the applicant in the commission of the alleged offence. Such apprehensions, though relevant for considerations of bail, cannot substitute the legal requirement of material disclosing prima facie involvement at the stage of discharge.

11] The perusal of the statements of witnesses namely Sakshi Shelkande, Sunil Madke, Baban Madke and Arun Madke only show that the accused Saurabh and Karan left the spot on the motorcycle of

the applicant. The entire charge-sheet does not show any overt act committed by the applicant. The Ld. A.P.P. fairly conceded that neither the victim nor any witnesses have attributed any overt act to the applicant. The medical history narrated to the doctor by the victim also does not reveal the name of the present applicant. In such circumstances, there is no material to show the exact allegations against the applicant. In the case of **Tuhin Kumar Biswas Vs. State of West bengal 2025 SCC Online SC 2604**, the Hon'ble Supreme Court held that a strong suspicion suffices to proceed with the trial. However, such suspicion must be found on some material which can be translated into evidence at the stage of trial. In the present case, there is no material which raises grave suspicion against the applicant regarding commission of crime. In such circumstances, his application deserves to be allowed.



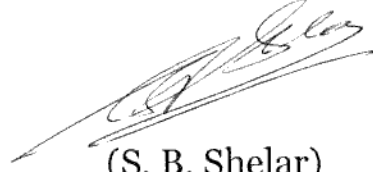
12] Taking the entire charge-sheet material at its face value, this Court is of the considered opinion that no sufficient ground exists to proceed against the present applicant. Continuation of the prosecution against him would amount to subjecting him to an unnecessary and unwarranted trial. Hence, the application deserves to be allowed.

ORDER

- i. The application at Exhibit 39 is hereby allowed.
- ii. The applicant Aditya Gulab Kabadi is discharged from the present case for the offences under Section 376D, 506, 34 of the Indian Penal Code, Section 4, 6, 8 and 12 of the POCSO Act and sections 3(2)(v), 3(2)(va), 3(1)(w)(i)(ii) of

the Prevention of Atrocities (Scheduled Castes and
Schedules Tribes) Act.

Junnar, Pune
Dt. : 06/02/2026



(S. B. Shelar)
Additional Sessions Judge, Junnar
Tal. Junnar, Dist. Pune.